Lembaga Pengurus Kerajaan Tempatan, Pulau Pinang, to amend the Assessment List under the provisions of section 64(1) of the Municipal Ordinance by increasing the annual value of premises No. 21-F, Rose Avenue, Penang (the property of the appellant) to $4,712 with effect from the 16th day of May, 1974.

The grounds of appeal were:—

(1) that the proposed assessment was too high;

(2) that the proposed assessment was arbitrary and not based on what the premises can reasonably be let out for;

(3) that the Lembaga Pengurus Kerajaan Tempatan has no jurisdiction to make the amendment under section 64;

(4) that the Lembaga Pengurus Kerajaan Tempatan has no power to amend the assessment list with effect from the date as proposed in the notice.

The facts were agreed on and an agreed statement of facts as to how, when and where the assessment list was amended, was filed and put in as Exhibit A.

Various arguments were put forward to the court by counsel for the appellant to support his grounds of appeal, and various arguments were canvassed by counsel for the respondent to support the valuation of the Valuation Department but to my mind all these arguments can only be entertained if the provisions of the Rating Validation Enactment 1976 can be reconciled with them. Mr. Lim Ewe Hock, counsel for appellant, submits that this is only a Rating Validation law and the provisions of the Municipal Ordinance especially sections 62, 64, and 68 have not been repealed. He argues that a restricted meaning must be given to sections 6 and 7 of the Enactment.

Mr. Wong Sai Heng on the other hand argues that the purpose of the Enactment was to validate certain assessments and rates and that sections 6 and 7 of the Enactment should be construed to achieve the objects and purposes of the Enactment.

Sections 3, 6 and 7 of the *Rating Validation Enactment 1976* read as follows: —

"3.(1) Notwithstanding the provisions of sections 61 and 63 of the Ordinance, it shall be lawful for every local authority and every local authority is hereby empowered in the year 1976, to prepare assessment lists, impose, charge, collect and recover rates for the year 1976 in the manner provided in Part VII of the Ordinance.

(2) The local authority may prepare separate assessment lists in respect of different parts within the local authority area.

6. No assessment made and no rate imposed, levied or collected in any previous year in purported exercise of any of the powers conferred in Part VII of the Ordinance and no act done before the commencement of this Enactment by any local authority, officer or other person purporting to be in exercise of any powers conferred by the Ordinance and in furtherance or in consequence of the making of such assessment or the imposition, levying or collection of such rate, shall be deemed to be or to have been invalid, irrecoverable or unlawful by reason of the failure on the part of the local authority, officer or other person to comply with the provisions of the Ordinance.

7. No legal proceeding of any kind whatsoever shall lie, be instituted or maintained in any court against any local authority, officer or other person purporting to be in exercise of any powers conferred by the Ordinance and in furtherance or in consequence of the making of any assessment or any imposition, charge, collection or recovery of rates for any year purporting to have been made in accordance with the provisions of the Ordinance prior to the commencement of this Enactment."

In view of these provisions of the Enactment, however repugnant they may be because of their effect on past commissions or omissions by the Local Government authorities, the court has no alternative but to hold that an appeal against the assessment is precluded by the Enactment. Section 7 especially is all embracing and does not permit a challenge in the courts to any assessment imposed on any property in the State of Penang prior to the coming into force of the Enactment.

In construing the meaning of sections 6 and 7 of the Enactment the court is constrained to construe them to achieve the object of the Enactment which is stated to be "to validate certain assessments and rates made or purporting to have been made under the provisions of the Municipal Ordinance (S.S. Cap. 133)."

I am fortified in my opinion that this is the correct approach for the interpretation of the Enactment by Lord Denning's M.R. dictum in the case *Engineering Industry Training Board* v. *Samuel, Talbot (Engineers), Ltd. & Anor.*[1] where he stated:

"But we no longer construe Acts of Parliament according to their literal meaning. We construe them according to their object and intent."

For the reasons given above, the appeal is dismissed. There will be no order as to costs as when the appeal was filed the court was entitled to consider the merits of the appeal. The appellant is out of count now purely because subsequent to his appeal retrospective legislation was enacted, which to use a common phrase, took the ground from under his feet. That being so, the appellant should not be mulcted in costs. The nature of this case and its outcome fully justify costs not following the event.

Appeal dismissed.

Solicitors: *Lim Ewe Hock; Presgrave & Matthews.*

DATUK PHUA CHENG LEONG & ORS. v. TAN KAH WICH & ORS.

[O.C.J. (Abdul Razak J.) July 11, 1978]
[Kuantan — Civil Suit No. 445 of 1977]

Societies — Constitution of society — Contractual effect of — Injunction restraining office bearers from carrying out their duties — Application to remove — Absence of fraud or misconduct.

The plaintiffs in this case sought a declaration to remove the injunction which the defendants had obtained to restrain the plaintiffs from acting as the office bearers of the Kuantan Kheng Chew Wooi Kun Society. The plaintiffs claimed that they were the legal President and Committee of the said society. On October 30, 1977 at its special meeting, the defendants passed a resolution to appoint themselves as office bearers of the society after the first plaintiff as President had declared the meeting closed. The plaintiff alleged that the defendants had thereby contravened articles 14, 28, 29 and 30 of the society.

The root cause of the dispute seemed to lie in the decision of the committee to erect an electrical sub-station in one of

the shop houses lots rather than on an open space on the society's land. The defendants wanted them to be on the vacant land instead because they said the society would benefit from the rent derived thereby. The plaintiffs decided that if the lease of the land on which the substation was sited was returned to the State, it would be difficult to get it back.

Held: (1) in as much as the articles of association constitute a contract between the members *inter se* the constitution of the Society was therefore a contract between the members of the society;

(2) the members had by their expressed contract virtually stipulated that their common affairs would be managed by the committee in accordance with the duties laid down in the constitution. There was therefore no right for the members or defendants to interfere with the contract when there was no provision in the final analysis to remove the committee. In the absence of fraud or misconduct, the defendants were not entitled to interfere with the plaintiffs in the use or enjoyment of the offices of the society, and should be restrained from so doing.

CIVIL SUIT.

Datuk Morris Edgar for the plaintiffs.

Mahinder Singh for the defendants.

Cur. Adv. Vult.

Abdul Razak J.: This is an action for a declaration that (a) the resolutions made by the defendants purporting at the Special General Meeting to appoint themselves as the President and Committee Members of the Kuantan Kheng Chew Wooi Kuan Society was null and void and (b) an injunction to restrain defendants as the said President and Committee Members from enforcing the said resolution or interfering with the plaintiffs in their use or enjoyment of the offices of the said Society.

The defendants had earlier obtained an *ex parte* interim injunction to restrain the plaintiffs from acting as the office bearers of the society. The plaintiffs had come before me to set aside the injunction but at the hearing counsel agreed that since the matters involved were mainly questions of law and the issues of fact were fairly uncontroverted, that the parties would agree that the court decides on the questions in the writ itself based on the submission of counsel. The parties have also agreed to ask the court to determine whether even if the meeting was valid, whether any of the resolutions were valid.

The plaintiffs claimed that they were the legal President and Committee of the said Society. On October 30, 1977 at its special meeting, the defendants passed a resolution as above stated after the first plaintiff as President had declared the meeting closed. The plaintiffs alleged that the defendants had thereby contravened articles 14, 28, 29 and 30 of the Society.

The defendants in their defence admitted that the plaintiffs were the legal President and Committee of the Society till October 30, 1977 but said they were illegally continuing to hold the said functions thereafter. The defendants claimed that they were legally appointed at the special general meeting with the 1st defendant as the Caretaker President, the 2nd defendant the Caretaker Secretary and the 3rd defendant as the Caretaker Treasurer. By a letter dated November 23, 1977 the defendants' solicitor asked the 1st plaintiff to deliver all the documents pertaining to the Society but he has failed to do so. They denied that the special general meeting was closed but the 1st plaintiff at the meeting said it was closed. They continued the meeting with the necessary quorum. They contend that the reason for the adjournment was not *bona fide* and the majority of the members present did not consent to the adjournment. The majority were entitled to resolve and continue the meeting for the purpose of which it was convened. They alleged that the special general meeting was called after the plaintiff's several attempts to avoid it and even pursuant to the order of the Registrar of Society. The items of the agenda was they said (1) to decide first the site of the electrical sub-station (2) to revoke the decision of the present plaintiff committee in appointing the new Building Sub-Committee and that the former Building Sub-Committee do remain (3) to pass a vote of no confidence in the present 21 Committee Members (4) to elect 21 fresh Committee Members for the remainder of the terms until February, 1979. The meeting resolved that: (i) the sub-station be placed outside the present shophouses (ii) the meeting revoked the decision of the present committee in appointing the new Building Sub-Committee and reinstate the original Building Sub-Committee headed by one, Dan Sin Wah (iii) that the meeting no longer had any confidence in the present 21 Committee Members (iv) that the meeting amends Item 4 of the Agenda and elect 11 fresh Committee Members for a term of 3 clear months from the date of the meeting with the power, duties and responsibilities of a normal committee to look after the affairs of the Association and to prepare for the amendment of the Constitution and to prepare and call for a new election to elect new office bearers before the expiry of the term.

The meeting elected 11 new Committee Members, with the office bearers as earlier mentioned. The defendants counter-claimed for a declaration that the said resolutions were valid, effective and binding, an injunction to restrain the plaintiffs and the remaining Committee Members from continuing to act as the Committee of the Association. The plaintiffs to deliver all documents relating to the Association affairs to the defendants. That the defendants be allowed 3 months from the date of the order to carry out the fourth resolution.

It seems to me considering the ambit of the reference that I should not spend a great deal of time to decide whether the meeting was properly convened or not, since, I am constrained to say from the events that the meeting was properly held. It does not make the gathering an improper and illegal one merely because the Chairman had on his own accord chosen to leave the meeting when it became somewhat agitative and restless. What was the Chairman for then? If he found that the meeting had turned unruly it was not for him to turn his back and flee but to quell the disturbance by expelling those who disobeyed him, if necessary, but retreat he must not, when it was clearly his duty to restore peace and decorum lest he be held to have failed in his duty. One notes that the police was in attendance, I expect not purely on a watching brief but I suppose, with the approval of all, to assist to quell an uprising should there be an unholy cause for one.

But having said that the more important question that need to be resolved is whether the meeting had

properly and correctly resolved what were resolved. The circumstances which led to these resolutions were somewhat along this line. It can be gathered from the minutes of the meeting taken down separately by both sides. It was common ground that there was a resolution made by the general meeting on February 18, 1973 to erect six 4-storey shophouses. That an electrical sub-station was to be installed for the use of the said shophouses. That the sub-committee was appointed for the purpose presumably by the plaintiffs' committee but that sub-committee was dissolved by the plaintiffs' committee. The root cause of the dispute seemed to lie in the committee deciding to erect the sub-station in one of the shophouses rather than on an open space on the Society's land. The defendants wanted them to be on the vacant land instead because they said the Society would benefit from the rent derived thereby. The plaintiffs replied that the land on which the sub-station was to be sited was leased from the State, and once you gave it to the authority, State or Statutory it would be difficult to get it back. And it had also its added disadvantage that once the sub-station was outside the shop lots, the public would also have access to its utility and this they probably thought might not be socially and economically prudent. They also feared that the project would involve partitioning the land and they felt that this process would, from past experiences, take a long time to be of any advantage. They thought, I suspect, that while the Society might stand to lose a lot of money by not making use of all the six shophouses, they may stand to gain in the long run, in any event since they would be able to rent the remaining five shophouses right away, since light would be immediately available rather than wait for it indefinitely until the land was partitioned for the sub-station to be installed. The defendants however thought that since their idea was a better one, the plaintiff committee must accept it and if they refused they must be kicked out, so to speak. The meeting was therefore convened with that object in mind and the desired object was achieved. But, the essential question, was it right for the defendants to have acted in such a high handed and drastic manner in the absence of any provisions in their Constitution allowing them so to act when on the contrary it had entrusted the Committee with the powers to act with such freedom as stated in Article 13: (a) to execute the resolutions of the Committee; (b) to plan the activities of the Society; (c) to manage the daily affairs of the Society? Unless of course there was power left to the Special General Meeting to veto the committee's decision in these specific cases, which stood out bold and clear. Or to put it in another way, unless it was so provided (under the limit of power of Article 26) what the restrictions were on the exercise by the Committee of their duties under Article 13 which powers only could be exercised by the Special General Meeting; otherwise, how does the court find the necessary reason for interfering in the internal affairs of men who have clearly chosen to govern themselves by their own code of conduct. I do not think a Society is any different from a partnership or a Company in so far as how men should conduct themselves, towards each other in their internal affairs. *Halsbury's* Vol. 6 3rd Edition page 298 says:

> "If no power is reserved to the Company to control the Directors when acting within the powers conferred on them by the Articles, the Articles must be altered by a special resolutions if it is desired to give the Company the power. Where under the Articles the business of the Company is to be managed by the Directors and the Articles confer on them the full powers of the Company subject to such regulations, not inconsistent with the Article as may be prescribed by the Company in General Meeting, the share-holders are not enabled by resolutions passed at a general meeting without altering the Articles to give effective direction to the Directors how the Company's affairs are to be managed nor to overrule any decisions come to by the Directors in the conduct of his business."

In my view the Committee or Committee Members basically are no different from the Directors or the Board of Directors in so far as their basic structure was concerned, in discharging their respective functions. What the Article is to the Company the Constitution is to the Society. They both govern the conduct of the members and the share-holders, as the case may be, among themselves and in the day to day activities of the Board of Directors, or the Committee. In as much as the principle is laid down in Company Law that the Articles of Association are a contract between the members *inter se* so the Constitution is a contract between the members of the Society. What is the contract therefore to be found in the Constitution which the members have solemnly pledged under Article 32 to uphold? It seems to me that the members have by their expressed contract virtually stipulated that their common affairs shall be managed by the Committee in accordance with the duties laid down in Article 13 of which three of the duties therein earlier mentioned are clearly pertinent to the present dispute. Once you get a stipulation of that kind in a contract made between the parties, what right is there for the members to interfere with the contract when there is no provision in the final analysis to remove the committee. Even if it is said that the court ought to act on an implied contract to prevent an injustice, what right has it to interfere except in circumstances in which the Society itself would act to remove their own trustees, namely, in cases of misconduct or fraud. But it would appear the Committee had committed none. All they had done was to carry out the resolutions of the General Meeting to effect the building of the six shophouses and I most respectfully do not see how they could be said to have misconducted themselves merely because they had taken one line of action instead of another, because of which the Society had suffered less in income than it should have, if in the circumstances they have nevertheless acted with the utmost good faith and in the best interest of the Society. I do not know under what circumstances the committee had acted to dissolve the previous sub-committee, but again unless they are shown to have grossly misconducted themselves or had been fraudulent how can they be prevented from dissolving the body which they have themselves appointed to assist them, unless the power of dissolving it is reserved to the General Meeting of which there was no such provision. Clearly, in my view, there was no power in the members to revoke the decision of the Committee to site the sub-station of the shophouses and it follows they had no power to revoke the decision of the Committee appointing the Building Sub-Committee and therefore they had no power to pass a vote of no confidence

resulting in the expulsion of the plaintiffs until their full term had expired. And the rest of the resolutions would also have the same effect. It was said that the Committee had the power to act in any manner it liked because under Article 9 the highest authority of the Association was the members General Meeting. But, with great respect, the Constitution was meant for the articulate and the law abiding, not dictators, which meant that in pursuing their aims and object it must be presumed that the Constitution would be read in such a way as not to affect the right to act of those upon whom the members have themselves placed their trust and confidence. Consequently the Special General Meeting's power under Article 9 must be presumed to be exercised as not to defeat if not nullify the effort of the directors to execute the proper resolutions of the General Meeting under Article 13(a) or to manage the daily affairs of the Society under Article 13(c) otherwise Article 9 could be read to enable a group of people to get together to dethrone the governing body for the flimsiest of reasons. If the General Meeting was to have such sweeping powers, then it must (if the Registrar so permits) clearly, categorically and expressedly by necessary amendment, so provide in the Constitution. It was also said that the Special General Meeting could dismiss the encumbent Committee because the Special General Meeting was empowered under the article to elect the Committee. But how conceivably could a new Committee be appointed unless and until the encumbent one was removed? But if it needed an express provision under Article 36 to remove the trustee, could we seriously imagine the governing body itself could be removed without such express power. I have my greatest doubts. It may well be asked what for was then the power to elect given to the Committee at the Special General Meeting. But an election did not necessarily arise merely because the directors were removed. It could arise because there had been a casual vacancy caused by the death of the members or resignation *en bloc* of the whole committee or the inability of the Committee Member or members to act. In such a situation the cause for an election might well arise at a Special General Meeting.

In the circumstances, I would declare therefore that the resolutions made by the defendants were null and void and of no effect. I would therefore make the consequential order that the interim injunction imposed on the plaintiff be discharged and order that the defendants be restrained from interfering with the plaintiffs in the use or enjoyment of the offices of the Society.

Order accordingly.

Solicitors: *Datuk Morris Edgar and Thuraisingham; Mahinder Singh Dulku.*

TENGKU NIK MAIMUNAH & ANOR. v. MAJLIS UGAMA DAN ADAT MELAYU NEGERI TRENGGANU & ORS.

[O.C.J. (Harun J.) April 15 and July 24, 1978]
[Kuala Trengganu — Civil Suit No. 80 of 1970]

Islamic Law — Wakaf Khas — Validity of — Federal Constitution, art. 3(2) and 9th Schedule List II — Trengganu State Constitution, arts. III, IV and XII — Trengganu Wakaf Validating Enactment, 1972 — Administration of Islamic Law Enactment, 1955, Trengganu, ss. 2, 59, 60 and 61.

Constitutional Law — Muslim religion — Federal Constitution, art. 3(2) & 9th Schedule List II — Trengganu State Constitution arts. III, IV and XII.

In this case the first plaintiff on June 13, 1961 made a document purporting to be a *wakaf* by which she made a number of dispositions in favour of her relatives and the balance to various religious and charitable objects. Subsequently she wrote to the Commissioner of Religious Affairs, Trengganu, to revoke the *wakaf*. In this suit she sought a declaration that the said purported *wakaf* was void.

Held: (1) the validity of the *wakaf* in this case must be determined in accordance with the Muslim law as professed and practised in the State of Trengganu and subject to any rules as to its administration that may be regulated by the State laws of Trengganu, including the Administration of Islamic Law Enactment, 1955 and the Islamic *Wakaf* Validating Enactment, 1972;

(2) the *wakaf* in this case has been validated by section 3 of the Islamic *Wakaf* Validating Enactment, 1972 subject to rights, titles, obligation or liability created before August 8, 1972;

(3) by virtue of section 61 of the Administration of Islamic Law Enactment, the *wakaf* was valid only in respect of a third of her property as on June 13, 1961.

Cases, referred to:-

(1) *Commissioner for Religious Affairs* v. *Tengku Mariam* [1970] 1 M.L.J. 222.

(2) *Tengku Mariam & Anor.* v. *Commissioner for Religious Affairs, Trengganu & Ors.* [1969] 1 M.L.J. 110.

CIVIL SUIT.

Peter Mooney (*Kirpal Singh Brar* and *Haji Hassan Ishak* with him) for the plaintiff.

S.T. Chung for defendants 6, 7, 9, 11, 12, 13, 14, 15 and 20.

Cur. Adv. Vult.

Harun J.: This case concerns a *wakaf* created by Tengku Nik Maimunah Hajjah binti Almarhum Sultan Zainal Abidin of Trengganu where the plaintiffs claim *inter alia:*

"A declaration that the said purported *wakaf* is void."

The agreed facts are as follows: —

1. On Sunday 22 Muharram 1324 (Al Hijjrah) corresponding to March 18, 1906, the late Sultan Zainal Abidin of Trengganu, made a grant of the lands known as the Chenderong Concession to his daughter, the first plaintiff, Tengku Nik Maimunah and her husband Tengku Ngah Omar bin Abdul Rahim, in equal shares.

2. On the death of her husband the first plaintiff became by Islamic Law the owner of an undivided 5/8 share in the Chenderong Concession.

3. On June 13, 1961 the first plaintiff made a document which purports to be a *Wakaf*. The instrument is in Malay in the Jawi script and was registered in the office of the Majlis Ugama dan Adat Melayu,